

REMARKS

To more particularly recite the presently claimed invention, Applicant has amended claims 1-3, 6, 7, 9-15 and 17-21, and have canceled claim 8, as presented above, to more particularly recite what Applicant regards as his invention. It is believed that no new matter is added to the amended claims.

On page 2 of the Office Action, the Examiner objects to the lack of drawings under 37 CFR 1.83(a), asserting that new drawings are required to show each of the claimed features of the invention, including "shoe sole," "scented material/formulation compound," "void," "receptacle," "hole," "O-ring," "multi-sectional construction," "visual aspect," "two or more plugs or inserts", with no new matter entered.

Applicant provides new Figure 1 to include each of the claimed elements, which Applicant believes to not include any new matter.

Accordingly, reconsideration and withdrawal of this objection is requested.

On page 3 of the Office Action, the Examiner rejects claim 9, as failing to enable to comply with the enablement requirement, asserting that claim 9 lacks clarity by the use of the term "void can accommodate said at least one scented plug or insert comprising any embodiment of an O-ring around the non-wearing circumference of the entire shoe," as the description of the "ring" in the specification was not understood by the Examiner.

In response, Applicant has amended claim 9 to more particularly recite what Applicant regards to be the invention in that the description of the ring around the non-wearing circumference of the shoe has been clarified to be understood by one of ordinary skill in the art. The term ring in the specification is fully enabled by the following description which would enable one of ordinary skill in the art to make and use the presently claimed invention according to claim 9, e.g., at pages 11-12 of the present specification:

In the case of a novelty plug or insert comprising an "O" ring around the non-wearing circumference of the sole, an end user can have a collection of "O" rings, where a given "O" ring comprises novelty scented material/formulation compound comprising one or more scent(s) or pheromone(s), one or more color(s), design(s), etc. that are interchangeable on a given pair of shoes. Such could be useful, say, on a pair of women's black dress shoes, where an end user changes the "O" rings around the heel of the shoes to a color that matches a particular outfit, where the "O" rings also comprise a pheromone.

A given novelty scented plug or insert, and its corresponding void or receptacle can comprise any shape, design, directional orientation, size, or depth. Also, a plug or insert can comprise a shape that fills a void in the form of a groove, channel, or crevice comprising any shape, design, design pattern, directional orientation, size, or depth. As suggested earlier, it is possible that a groove, channel, or crevice can be formed on the shoe sole to accommodate an elastic or inelastic novelty plug or insert comprising any embodiment of an "O" ring around any circumference of the shoe sole, or even in or on the wear surface of the sole itself. It may be desirable for a given void or receptacle to accommodate two or more novelty plugs or inserts, either along the depth of said void, side-by-side along/across the opening gap of said void, or both. Such could be useful in a situation where a singular novelty plug or insert comprising a smoking means (which will be disclosed) is situated beneath a singular novelty plug or insert comprising a pheromone.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

On page 3-4 of the Office Action, the Examiner has rejected claims 1-21 under 35 USC 112, second paragraph, as indefinite, for the reasons presented on pages 3-4 of the Office Action, in particular objecting to:

- (a) the terms "novelty", "unique" generally in the claims;
- (b) the terms "shoe sole" and "void creating means" in claim 8,
- (c) the recitation of the plug as containing the scented material/compound being only functionally recited in dependent claim 6 while the scented material in claim 1 was positively recited;
- (d) the phrase "does not comprise said at least one novelty scented... smoking means" not being understood in claim 7; and
- (e) the recitation of the plug or insert having multi-sectional construction not being understood in claim 18.

In response, Applicant has replaced amended claims 1, 6, 7 and 18 to more definitely recite what Applicant regards to be the invention.

With regard to (a) above, the objected to terms have been deleted rendering this rejection moot.

With regard to (b) above, claim 8 has been canceled, rendering this rejection moot.

With regard to (c) above, the objected to functional recitation of claim 6 has been added as an alternative to the specific recitation in claim 1, rendering this rejection moot.

With regard to (d) above, this term is not indefinite under 35 USC section 112.2, in that the specification fully describes this term to one of ordinary skill in the art, on Page 9 as follows:

“ ... any smoking means that deploys or releases non-colored or colored smoke, where the deployment of said smoke acts as an entertaining or amusing visual effect, especially for younger shoe wearers. One means of doing this is by having one or more layers of smoke emitting material within the shoe sole itself, where the smoke deploys at certain wear levels. Another way to release colored or non-colored smoke is by employing any encapsulated means embedded in the material/formulation compound, where the encapsulated means uses capsules or microcapsules that rupture due to exposure and wear, thereby releasing non-colored/colored smoke. Smoke may be attained using any means, such as through a chemical reaction, or the release of a powder that deploys airborne particles. Such encapsulated means could be concentrated in a particular area of the sole material/formulation compound, or may be randomly distributed in the sole material/formulation compound, where the colored or uncolored smoke deploys at any given moment due to random wear, thereby adding an element of “surprise” to the wearer. It is possible in certain embodiments to have this smoke feature in addition to either scented or unscented sole material/formulation compounds”.

Accordingly the term “smoking mean” is definite under 35 USC section 112.2.

With regard to (e) above, this term is not indefinite under 35 USC section 112.2, in that the specification fully describes this term to one of ordinary skill in the art, on Page 13 as follows:

The novelty scented plug or insert may comprise a plug or insert comprising multi-sectional construction, where a singular novelty plug or insert comprises two or more sections, where any one given section, or even two or more sections, can be oriented either along the depth of the novelty plug or insert,

and/or along or across the surface area that is visible on the shoe sole after installation (where the two or more sections are side by side; or, where two or more sections are side by side, over top of a third section that is hidden underneath).

Accordingly the term “multi-sectional construction” is definite under 35 USC section 112.2.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hartung, et al. (US 4,257,176). Hartung, et al. disclosed, per the abstract: “An insole for footwear has odor masking or malodor counteractant material dissolved, trapped or encapsulated in a somewhat resilient resin coating through which it will progressively migrate or bleed under application of foot loads, foot perspiration and elevated foot temperatures to the surface of the coating to be released into the footwear to mask or counteract foot odors.”

The examiner has mischaracterized Hartung with respect to the present invention. Hartung is an insole that is installed in the interior surface of a shoe where the user's foot resides, and comes in direct contact with the foot of the shoe wearer. Unlike the present invention, Hartung does not come in direct contact with outside ground surfaces such as pavements, floor coverings, etc. An intended purpose for Hartung is “to mask or counteract foot odors”, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc.

Thus, the present invention does not recite, disclose or include insoles, but discloses and claims shoe shoes. Accordingly, the cited reference fails to disclose each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 1, 6-7, 9, 11, 14, 15, 17, 18, 19-21 are rejected under 35 U.S.C. 102(b), as being anticipated by Laughlin, et al. (US 5,732,485). Laughlin, et al. comprises, per the abstract: "A deodorizer for masking foot and shoe odors through controlled release of fragrance..." whereby said deodorizer is installed in "the interior surface of a shoe", where the user's foot resides.

Again the examiner has mischaracterized Laughlin with respect to the present invention in that Laughlin does not come in direct contact with outside ground surfaces such as pavements, floor coverings, etc. Also, Claims 8, 12, and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laughlin, et al.

An intended purpose for Laughlin, as is Hartung, is to mask or counteract foot odors using a deodorizing device, whereby the present invention has no deodorizing aspects whatsoever for the inside of the shoe, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe or boot, as presently claimed.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe shoes. Accordingly, the cited reference fails to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '485 in view of Maples. Maples (US 5,024,008) comprises "a rubber overshoe to be worn over a boot worn by the hunter" with an animal "scent dispenser...which is attached to the overshoe for dispensing scent on the ground as the hunter walks" where the animal "scent dispenser is isolated from the boot so that the overshoe and dispenser may be removed from the boot...". The rubber overshoe, which is removable, and is

not inherent to the boot itself, is not scented, and unlike the present invention which claims normal wear of said shoe sole exposes fresh surface area of said scented material/formulation compound releases a desired aroma, and further in Maples, the "...scent source means includes a sponge and animal lure impregnated therein". The presently claimed invention further does not include the use of an overshoe with a dispenser to dispense an animal scent.

Accordingly, the present claims distinguish over the cited reference(s), which do not suggest or teach the presently claimed invention. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of Williford. Williford (US 5,261,169) discloses where the "...article is a shoe insole and the active composition is an anti-microbial powder." Again, the examiner has mischaracterized the reference. In actuality, Williford more closely resembles Laughlin, et al. than the present disclosure in that the insole is installed in the interior surface of a shoe where the user's foot resides, and comes in direct contact with the foot of the shoe wearer.

An intended purpose for Laughlin and Williford, is to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin and Williford for scenting the exterior sole of a shoe or boot, as presently claimed.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe shoes. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of O'Brien. O'Brien (US 5,039,243) discloses fragrance releasing crayons. In the present invention, the colored sole is visible from the outside of the shoe as it is worn, whereas with Laughlin, the colored scenting means is only visible from the inside of the shoe. Furthermore, there is no suggestion or motivation to combine a reference for scented crayons with deodorizing insoles, such that the combination is improper under the MPEP.

An intended purpose for Laughlin is to mask or counteract foot odors using a deodorizer inside the shoe where the foot resides, whereby the present invention has no deodorizing aspects for inside the shoe, but is rather meant to provide a scent to the outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe or boot, as presently claimed, and O'Brien's suggestion for scented crayons in no way makes up for the deficiencies of Laughlin in failing to suggest the presently claimed scented shoe soles.

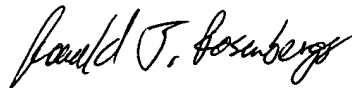
Thus, the present invention does not recite, disclose, include or suggest in-shoe deodorizers, such as deodorizing in-shoe insoles, but discloses and claims scented shoe soles. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s) and meet the formal requirements of patentability.

Applicant respectfully requests reconsideration and allowance of the present claims.

The Examiner is invited to contact Applicant with any questions or comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald J. Rosenberger".

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